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CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2034

Introduced by Assembly Member Gatto

February 20, 2014

An act to ~~add Section 2361 to the Probate Code, and to add Section 15657.035 to amend Section 15657.03 of~~ the Welfare and Institutions Code, relating to elder and dependent adults.

LEGISLATIVE COUNSEL'S DIGEST

AB 2034, as amended, Gatto. Elder and dependent adults.

~~Existing law requires the conservator of a person to be responsible for the care, custody, control, and education of the conservatee, except when the court, in its discretion, limits the powers and duties of the conservator, as specified.~~

~~This bill would require the conservator of an elder or dependent adult to inform the relatives of the conservatee whenever the conservatee dies or is admitted to a medical facility for acute care for a period of 3 days or more and would require the conservator, in the event of death~~

of the conservatee, to inform the relatives of any funeral arrangements and the location of the conservatee's final resting place.

Existing law authorizes a conservator or a trustee of an elder or dependent adult, an attorney-in-fact of an elder or dependent adult, a person appointed as a guardian ad litem for an elder or dependent adult, or another person legally authorized to seek a protective order on behalf of an elder or dependent adult who has suffered physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering, or the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.

~~This bill would additionally allow a petition to be brought for a protective order by a relative of an elder or dependent adult to enjoin a person from keeping the elder or dependent adult in isolation from contact with the relative. The bill would allow a court to make an order to restrain any person for the purpose of preventing a recurrence of abuse upon proof of a past act or acts of isolation and upon a showing that the elder or dependent adult desires contact with the relative.~~

~~The bill would require the court to appoint counsel for the elder or dependent adult and would allow the court to award court costs and attorney's fees to the prevailing party. The bill would require information on any protective order issued pursuant to these provisions to be transmitted to the Department of Justice, as provided. The bill would require the county adult protective services or local law enforcement agency in the county where the proposed visitee resides to investigate a complaint of isolation and to prepare a report to be provided to the court stating, among other things, whether the proposed visitee desires contact from the relative. The bill would require, on request of the relative, any law enforcement officer who is present at the scene of reported abuse to serve a protective order issued pursuant to these provisions on the restrained person. By increasing the duties of county adult protective services and local law enforcement agencies, this bill would impose a state-mandated local program.~~

This bill would, for purposes of a petition alleging abuse in the form of isolation, as defined, allow the petition to be brought on behalf of an abused elder or dependent adult by a relative of the first degree of the elder or dependent adult who seeks visitation with the isolated elder or dependent adult.

The bill would require the court to determine whether the elder or dependent adult on whose behalf the petition was filed has retained or

intends to retain an attorney, and if the elder or dependent adult has not retained an attorney and does not plan to retain one, allow the court to appoint an attorney. If an attorney is appointed, the bill would require the court to fix a reasonable sum for the reasonable costs and fees of the elder or dependent adult's attorney. The bill would allow the court to order the respondent, if the petition is granted, or the relative of the first degree, if the petition is denied, to pay the reasonable fees and costs of the elder or dependent adult's attorney. The bill would require the court to determine the ability of the person to pay these fees and costs and would require the county to pay to the extent the person is unable to pay. By requiring the county to pay these costs, this bill would impose a state-mandated local program.

Because a violation of a court order issued pursuant to the above provisions would be punishable as contempt, a misdemeanor, this bill would create a new crime and would thereby impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 **SECTION 1.** *Section 15657.03 of the Welfare and Institutions*
- 2 *Code is amended to read:*
- 3 15657.03. (a) (1) An elder or dependent adult who has suffered
- 4 abuse as defined in Section 15610.07 may seek protective orders
- 5 as provided in this section.
- 6 (2) (A) A petition may be brought on behalf of an abused elder
- 7 or dependent adult by a conservator or a trustee of the elder or
- 8 dependent adult, an attorney-in-fact of an elder or dependent adult
- 9 who acts within the authority of the power of attorney, a person

1 appointed as a guardian ad litem for the elder or dependent adult,
2 or other person legally authorized to seek such relief.

3 *(B) If the petition alleges abuse of an elder or dependent adult*
4 *in the form of isolation, as defined in Section 15610.43, the term*
5 *“other person legally authorized to seek such relief” as used in*
6 *paragraph (2) includes a relative within the first degree of the*
7 *abused elder or dependent adult who seeks visitation with the*
8 *isolated elder or dependent adult.*

9 (b) For the purposes of this section:

10 (1) “Conservator” means the legally appointed conservator of
11 the person or estate of the petitioner, or both.

12 (2) “Petitioner” means the elder or dependent adult to be
13 protected by the protective orders and, if the court grants the
14 petition, the protected person.

15 (3) “Protective order” means an order that includes any of the
16 following restraining orders, whether issued ex parte, after notice
17 and hearing, or in a judgment:

18 (A) An order enjoining a party from abusing, intimidating,
19 molesting, attacking, striking, stalking, threatening, sexually
20 assaulting, battering, harassing, telephoning, including, but not
21 limited to, making annoying telephone calls as described in Section
22 653m of the Penal Code, destroying personal property, contacting,
23 either directly or indirectly, by mail or otherwise, or coming within
24 a specified distance of, or disturbing the peace of, the petitioner,
25 and, in the discretion of the court, on a showing of good cause, of
26 other named family or household members or a conservator, if
27 any, of the petitioner.

28 (B) An order excluding a party from the petitioner’s residence
29 or dwelling, except that this order shall not be issued if legal or
30 equitable title to, or lease of, the residence or dwelling is in the
31 sole name of the party to be excluded, or is in the name of the party
32 to be excluded and any other party besides the petitioner.

33 (C) An order enjoining a party from specified behavior that the
34 court determines is necessary to effectuate orders described in
35 subparagraph (A) or (B).

36 (4) “Respondent” means the person against whom the protective
37 orders are sought and, if the petition is granted, the restrained
38 person.

39 (c) An order may be issued under this section, with or without
40 notice, to restrain any person for the purpose of preventing a

1 recurrence of abuse, if a declaration shows, to the satisfaction of
2 the court, reasonable proof of a past act or acts of abuse of the
3 petitioning elder or dependent adult.

4 (d) Upon filing a petition for protective orders under this section,
5 the petitioner may obtain a temporary restraining order in
6 accordance with Section 527 of the Code of Civil Procedure, except
7 to the extent this section provides a rule that is inconsistent. The
8 temporary restraining order may include any of the protective
9 orders described in paragraph (3) of subdivision (b). However, the
10 court may issue an ex parte order excluding a party from the
11 petitioner's residence or dwelling only on a showing of all of the
12 following:

13 (1) Facts sufficient for the court to ascertain that the party who
14 will stay in the dwelling has a right under color of law to possession
15 of the premises.

16 (2) That the party to be excluded has assaulted or threatens to
17 assault the petitioner, other named family or household member
18 of the petitioner, or a conservator of the petitioner.

19 (3) That physical or emotional harm would otherwise result to
20 the petitioner, other named family or household member of the
21 petitioner, or a conservator of the petitioner.

22 (e) A request for the issuance of a temporary restraining order
23 without notice under this section shall be granted or denied on the
24 same day that the petition is submitted to the court, unless the
25 petition is filed too late in the day to permit effective review, in
26 which case the order shall be granted or denied on the next day of
27 judicial business in sufficient time for the order to be filed that day
28 with the clerk of the court.

29 (f) Within 21 days, or, if good cause appears to the court, 25
30 days, from the date that a request for a temporary restraining order
31 is granted or denied, a hearing shall be held on the petition. If no
32 request for temporary orders is made, the hearing shall be held
33 within 21 days, or, if good cause appears to the court, 25 days,
34 from the date that the petition is filed.

35 (g) The respondent may file a response that explains or denies
36 the alleged abuse.

37 (h) (1) *Upon the filing of a petition by a relative of the first*
38 *degree pursuant to paragraph (2) of subdivision (a), the court*
39 *shall determine whether the elder or dependent adult on whose*
40 *behalf the petition was filed has retained or intends to retain an*

1 attorney. If the elder or dependent adult has not retained an
2 attorney and does not plan to retain one, the court may appoint
3 an attorney to represent the elder or dependent adult.

4 (2) If the court appoints an attorney to represent the elder or
5 dependent adult, the court may order the respondent, if the petition
6 is granted, or the relative of the first degree, if the petition is
7 denied, to pay the reasonable fees and costs of the elder or
8 dependent adult's attorney.

9 (3) If the court appoints an attorney to represent the elder or
10 dependent adult, the court shall, upon conclusion of the matter,
11 fix a reasonable sum for the reasonable costs and fees of the elder
12 or dependent adult's attorney and shall make a determination of
13 the paying person's ability to pay all or a portion of that sum. The
14 sum may, in the discretion of the court, include compensation for
15 services rendered, and expenses incurred, before the date of the
16 order appointing counsel.

17 (4) If the court determines that the person ordered to pay the
18 reasonable fees and costs of the elder or dependent adult's attorney
19 has the ability to pay all or a portion of the sum, the court shall
20 order that person to pay in any installments and in any manner
21 the court determines to be reasonable and compatible with the
22 person's financial ability.

23 (5) If the court determines that the person who is ordered to
24 pay the reasonable fees and costs of the elder or dependent adult's
25 attorney in the amount determined pursuant to paragraph (3) is
26 unable to pay, the county shall pay the sum to the counsel to the
27 extent the court determines the person is unable to pay.

28 (6) If the elder or dependent adult fails to participate in the
29 proceeding in any meaningful way, the court shall appoint a
30 guardian ad litem for the elder or dependent adult to determine
31 the ability of the elder or dependent adult to participate.

32 ~~(h)~~

33 (i) The court may issue, upon notice and a hearing, any of the
34 orders set forth in paragraph (3) of subdivision (b). The court may
35 issue, after notice and hearing, an order excluding a person from
36 a residence or dwelling if the court finds that physical or emotional
37 harm would otherwise result to the petitioner, other named family
38 or household member of the petitioner, or conservator of the
39 petitioner.

40 ~~(i)~~

1 (j) (1) In the discretion of the court, an order issued after notice
2 and a hearing under this section may have a duration of not more
3 than five years, subject to termination or modification by further
4 order of the court either on written stipulation filed with the court
5 or on the motion of a party. These orders may be renewed upon
6 the request of a party, either for five years or permanently, without
7 a showing of any further abuse since the issuance of the original
8 order, subject to termination or modification by further order of
9 the court either on written stipulation filed with the court or on the
10 motion of a party. The request for renewal may be brought at any
11 time within the three months before the expiration of the order.

12 (2) The failure to state the expiration date on the face of the
13 form creates an order with a duration of three years from the date
14 of issuance.

15 (3) If an action is filed for the purpose of terminating or
16 modifying a protective order prior to the expiration date specified
17 in the order by a party other than the protected party, the party
18 who is protected by the order shall be given notice, pursuant to
19 subdivision (b) of Section 1005 of the Code of Civil Procedure,
20 of the proceeding by personal service or, if the protected party has
21 satisfied the requirements of Chapter 3.1 (commencing with
22 Section 6205) of Division 7 of Title 1 of the Government Code,
23 by service on the Secretary of State. If the party who is protected
24 by the order cannot be notified prior to the hearing for modification
25 or termination of the protective order, the court shall deny the
26 motion to modify or terminate the order without prejudice or
27 continue the hearing until the party who is protected can be
28 properly noticed and may, upon a showing of good cause, specify
29 another method for service of process that is reasonably designed
30 to afford actual notice to the protected party. The protected party
31 may waive his or her right to notice if he or she is physically
32 present in court and does not challenge the sufficiency of the notice.

33 (j)

34 (k) In a proceeding under this section, a support person may
35 accompany a party in court and, if the party is not represented by
36 an attorney, may sit with the party at the table that is generally
37 reserved for the party and the party's attorney. The support person
38 is present to provide moral and emotional support for a person
39 who alleges he or she is a victim of abuse. The support person is
40 not present as a legal adviser and may not provide legal advice.

1 The support person may assist the person who alleges he or she is
2 a victim of abuse in feeling more confident that he or she will not
3 be injured or threatened by the other party during the proceedings
4 if the person who alleges he or she is a victim of abuse and the
5 other party are required to be present in close proximity. This
6 subdivision does not preclude the court from exercising its
7 discretion to remove the support person from the courtroom if the
8 court believes the support person is prompting, swaying, or
9 influencing the party assisted by the support person.

10 ~~(k)~~

11 (l) Upon the filing of a petition for protective orders under this
12 section, the respondent shall be personally served with a copy of
13 the petition, notice of the hearing or order to show cause, temporary
14 restraining order, if any, and any declarations in support of the
15 petition. Service shall be made at least five days before the hearing.
16 The court may, on motion of the petitioner or on its own motion,
17 shorten the time for service on the respondent. *If a petition is filed*
18 *by a relative of the first degree, the isolated elder or dependent*
19 *adult shall be notified of the hearing and any declarations in*
20 *support of the petition.*

21 ~~(l)~~

22 (m) A notice of hearing under this section shall notify the
23 respondent that if he or she does not attend the hearing, the court
24 may make orders against him or her that could last up to five years.
25 *If a petition is filed by a relative of the first degree, the isolated*
26 *elder or dependent adult shall be notified that if he or she does*
27 *not attend the hearing, the court may issue a protective order that*
28 *facilitates visitation with him or her that could last up to five years.*

29 ~~(m)~~

30 (n) (1) The court may, upon the filing of a declaration by the
31 petitioner that the respondent could not be served within the time
32 required by statute, reissue an order previously issued and dissolved
33 by the court for failure to serve the respondent. The reissued order
34 shall remain in effect until the date set for the hearing.

35 (2) The reissued order shall state on its face the date of
36 expiration of the order.

37 ~~(n)~~

38 (o) (1) If a respondent, named in an order issued under this
39 section after a hearing, has not been served personally with the
40 order but has received actual notice of the existence and substance

1 of the order through personal appearance in court to hear the terms
2 of the order from the court, no additional proof of service is
3 required for enforcement of the order.

4 (2) If the respondent named in a temporary restraining order is
5 personally served with the order and notice of hearing with respect
6 to a restraining order or protective order based on the temporary
7 restraining order, but the respondent does not appear at the hearing,
8 either personally or by an attorney, and the terms and conditions
9 of the restraining order or protective order issued at the hearing
10 are identical to the temporary restraining order, except for the
11 duration of the order, then the restraining order or protective order
12 issued at the hearing may be served on the respondent by first-class
13 mail sent to the respondent at the most current address for the
14 respondent that is available to the court.

15 (3) The Judicial Council form for temporary orders issued
16 pursuant to this subdivision shall contain a statement in
17 substantially the following form:

18
19 “If you have been personally served with a temporary restraining
20 order and notice of hearing, but you do not appear at the hearing
21 either in person or by a lawyer, and a restraining order that is the
22 same as this temporary restraining order except for the expiration
23 date is issued at the hearing, a copy of the order will be served on
24 you by mail at the following address: ____.

25 If that address is not correct or you wish to verify that the
26 temporary restraining order was converted to a restraining order
27 at the hearing without substantive change and to find out the
28 duration of that order, contact the clerk of the court.”

29
30 ~~(p)~~

31 *(p)* (1) Information on any protective order relating to elder or
32 dependent adult abuse issued by a court pursuant to this section
33 shall be transmitted to the Department of Justice in accordance
34 with either paragraph (2) or (3).

35 (2) The court shall order the petitioner or the attorney for the
36 petitioner to deliver a copy of an order issued under this section,
37 or a reissuance, extension, modification, or termination of the
38 order, and any subsequent proof of service, by the close of the
39 business day on which the order, reissuance, extension,
40 modification, or termination was made, to each law enforcement

1 agency having jurisdiction over the residence of the petitioner, and
2 to any additional law enforcement agencies within the court's
3 discretion as are requested by the petitioner.

4 (3) Alternatively, the court or its designee shall transmit, within
5 one business day, to law enforcement personnel all information
6 required under subdivision (b) of Section 6380 of the Family Code
7 regarding any order issued under this section, or a reissuance,
8 extension, modification, or termination of the order, and any
9 subsequent proof of service, by either one of the following
10 methods:

11 (A) Transmitting a physical copy of the order or proof of service
12 to a local law enforcement agency authorized by the Department
13 of Justice to enter orders into the California Law Enforcement
14 Telecommunications System (CLETS).

15 (B) With the approval of the Department of Justice, entering
16 the order or proof of service into CLETS directly.

17 (4) Each appropriate law enforcement agency shall make
18 available information as to the existence and current status of these
19 orders to law enforcement officers responding to the scene of
20 reported abuse.

21 (5) An order issued under this section shall, on request of the
22 petitioner, be served on the respondent, whether or not the
23 respondent has been taken into custody, by any law enforcement
24 officer who is present at the scene of reported abuse involving the
25 parties to the proceeding. The petitioner shall provide the officer
26 with an endorsed copy of the order and a proof of service, which
27 the officer shall complete and send to the issuing court.

28 (6) Upon receiving information at the scene of an incident of
29 abuse that a protective order has been issued under this section,
30 or that a person who has been taken into custody is the respondent
31 to that order, if the protected person cannot produce an endorsed
32 copy of the order, a law enforcement officer shall immediately
33 attempt to verify the existence of the order.

34 (7) If the law enforcement officer determines that a protective
35 order has been issued, but not served, the officer shall immediately
36 notify the respondent of the terms of the order and where a written
37 copy of the order can be obtained, and the officer shall at that time
38 also enforce the order. The law enforcement officer's verbal notice
39 of the terms of the order shall constitute service of the order and

1 is sufficient notice for the purposes of this section and for the
2 purposes of Section 273.6 of the Penal Code.

3 ~~(p)~~

4 (q) Nothing in this section shall preclude either party from
5 representation by private counsel or from appearing on the party's
6 own behalf.

7 ~~(q)~~

8 (r) There is no filing fee for a petition, response, or paper
9 seeking the reissuance, modification, or enforcement of a protective
10 order filed in a proceeding brought pursuant to this section.

11 ~~(r)~~

12 (s) Pursuant to paragraph (4) of subdivision (b) of Section
13 6103.2 of the Government Code, a petitioner shall not be required
14 to pay a fee for law enforcement to serve an order issued under
15 this section.

16 ~~(s) The~~

17 (t) *Except as provided in subdivision (h), the* prevailing party
18 in any action brought under this section may be awarded court
19 costs and attorney's fees, if any.

20 ~~(t)~~

21 (u) (1) A person subject to a protective order under this section
22 shall not own, possess, purchase, receive, or attempt to receive a
23 firearm or ammunition while the protective order is in effect.

24 (2) The court shall order a person subject to a protective order
25 issued under this section to relinquish any firearms he or she owns
26 or possesses pursuant to Section 527.9 of the Code of Civil
27 Procedure.

28 (3) Every person who owns, possesses, purchases, or receives,
29 or attempts to purchase or receive a firearm or ammunition while
30 subject to a protective order issued under this section is punishable
31 pursuant to Section 29825 of the Penal Code.

32 (4) This subdivision shall not apply in a case in which the
33 protective order issued under this section was made solely on the
34 basis of financial abuse unaccompanied by force, threat,
35 harassment, intimidation, or any other form of abuse.

36 ~~(u)~~

37 (v) Any willful disobedience of any temporary restraining order
38 or restraining order after hearing granted under this section is
39 punishable pursuant to Section 273.6 of the Penal Code.

40 ~~(v)~~

(w) This section does not apply to any action or proceeding governed by Title 1.6C (commencing with Section 1788) of Part 4 of Division 3 of the Civil Code, by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, or by Division 10 (commencing with Section 6200) of the Family Code. Nothing in this section shall preclude a petitioner's right to use other existing civil remedies.

(x) *When a petition is filed by a relative of the first degree pursuant to paragraph (2) of subdivision (a), both of the following shall apply:*

(1) *The court shall not issue a protective order without the knowledge and agreement of the elder or dependent person on whose behalf the petition is filed.*

(2) *If the isolated elder or dependent adult is so incapacitated that he or she cannot express an opinion concerning visitation with the petitioner, a petition for temporary conservatorship or guardianship may be initiated in accordance with Section 2250 of the Probate Code.*

~~(w)~~

(y) The Judicial Council shall develop forms, instructions, and rules relating to matters governed by this section. The petition and response forms shall be simple and concise, and their use by parties in actions brought pursuant to this section shall be mandatory.

~~SECTION 1. Section 2361 is added to the Probate Code, to read:~~

~~2361. A conservator of an elder or dependent adult shall inform the relatives of the conservatee, as listed in subdivision (b) of Section 1821, whenever the conservatee dies or is admitted to a medical facility for acute care for a period of three days or more. In the case of death, the conservator shall inform the relatives of any funeral arrangements and the location of the conservatee's final resting place.~~

~~SEC. 2. Section 15657.035 is added to the Welfare and Institutions Code, to read:~~

~~15657.035. (a) A petition may be brought for a protective order to enjoin a respondent from keeping a proposed visitee in isolation from contact with the petitioner.~~

~~(b) For the purposes of this section:~~

~~(1) "Isolation" has the same meaning as defined in Section 15610.43.~~

1 ~~(2) “Petitioner” means a person who is a relative in the first~~
2 ~~degree of the proposed visitee.~~

3 ~~(3) “Proposed visitee” means the elder or dependent adult, who~~
4 ~~is under the care or custody of the respondent, to be protected by~~
5 ~~the protective order and, if the court grants the petition, the~~
6 ~~protected person.~~

7 ~~(4) “Protective order” means an order enjoining a party from~~
8 ~~keeping the proposed visitee in isolation from contact with the~~
9 ~~petitioner that is issued after notice and hearing, or in a judgment,~~
10 ~~and may include terms of visitation.~~

11 ~~(5) “Respondent” means the person against whom the protective~~
12 ~~order is sought and, if the petition is granted, the restrained person.~~

13 ~~(e) (1) An order may be issued under this section to restrain~~
14 ~~any person for the purpose of preventing a recurrence of abuse, if~~
15 ~~a declaration shows, to the satisfaction of the court, reasonable~~
16 ~~proof of a past act or acts of isolation of the proposed visitee from~~
17 ~~contact with the petitioner, and upon a showing that the proposed~~
18 ~~visitee desires contact with the petitioner or that visitation is in the~~
19 ~~best interests of the proposed visitee.~~

20 ~~(2) Proof of the proposed visitee’s desire for contact with the~~
21 ~~petitioner may be shown by a report issued by the county adult~~
22 ~~protective services agency or law enforcement, pursuant to~~
23 ~~subdivision (e), in the county where the proposed visitee resides.~~

24 ~~(3) If the proposed visitee resides in a long-term care facility,~~
25 ~~as defined in Section 9701 of this code, or a residential facility, as~~
26 ~~defined in Section 1502 of the Health and Safety Code, then an~~
27 ~~order shall not be issued under this section, and Section 483.10 of~~
28 ~~Title 42 of the Code of Federal Regulations shall apply.~~

29 ~~(4) The order may specify the frequency, time, place, and~~
30 ~~location of visitation.~~

31 ~~(5) In deciding whether visitation with the petitioner is in the~~
32 ~~best interest of the proposed visitee, the court may consider whether~~
33 ~~the best interest of the proposed visitee requires that any visitation~~
34 ~~by the petitioner be limited to situations in which a third person,~~
35 ~~specified by the court, is present, or whether visitation shall be~~
36 ~~suspended or denied. The petitioner, proposed visitee, or~~
37 ~~respondent may submit to the court the name of a person who may~~
38 ~~be suitable to be present during visitation.~~

39 ~~(6) In deciding whether visitation with the petitioner is in the~~
40 ~~best interest of the proposed visitee, the court shall consider any~~

1 prior protective orders issued against the petitioner to protect the
2 proposed visitee.

3 (d) The court may require the proposed visitee, or the proposed
4 visitee's attorney, to appear at the hearing. If the proposed visitee
5 does not have an attorney, the court shall appoint an attorney to
6 represent the proposed visitee's interests.

7 (e) Upon receipt of a complaint of isolation from a petitioner
8 or upon court order, and within 20 days of receipt of the complaint
9 or court order, the county adult protective services or local law
10 enforcement agency, pursuant to subdivision (b) of Section 15650,
11 in the county where the proposed visitee resides, shall investigate
12 the complaint. The county adult protective services or local law
13 enforcement agency shall prepare a report, to be provided to the
14 petitioner and court that states, along with any findings pursuant
15 to paragraphs (1) through (3), inclusive, of subdivision (d) of
16 Section 15763, whether the proposed visitee is under the care or
17 control of the respondent or otherwise unable to provide for his or
18 her own physical care, and whether the proposed visitee desires
19 contact from the petitioner.

20 (f) Within 21 days, or, if good cause appears to the court, 25
21 days from the date that the petition is filed, a hearing shall be held
22 on the petition.

23 (g) The respondent may file a response that explains or denies
24 the alleged abuse.

25 (h) The court shall issue an order only after notice and a hearing
26 under this section, and the court shall not issue an ex parte order
27 under this section.

28 (i) In the discretion of the court, an order issued after notice and
29 a hearing under this section may have a duration of not more than
30 five years, subject to termination or modification by further order
31 of the court either on written stipulation filed with the court or on
32 the motion of a party. These orders may be renewed, upon the
33 request of a party, either for five years or permanently, without a
34 showing of any further abuse since the issuance of the original
35 order, subject to termination or modification by further order of
36 the court either on written stipulation filed with the court or on the
37 motion of a party. The request for renewal may be brought at any
38 time within the three months before the expiration of the orders.
39 The failure to state the expiration date on the face of the form

1 ~~creates an order with a duration of three years from the date of~~
2 ~~issuance.~~

3 ~~(j) Upon the filing of a petition for a protective order under this~~
4 ~~section, the respondent shall be personally served with a copy of~~
5 ~~the petition, notice of the hearing, any declarations in support of~~
6 ~~the petition, and any report submitted to the petitioner pursuant to~~
7 ~~subdivision (e). Service shall be made at least five days before the~~
8 ~~hearing.~~

9 ~~(k) A notice of hearing under this section shall notify the~~
10 ~~respondent that if he or she does not attend the hearing, the court~~
11 ~~may make orders against him or her that could last up to five years.~~

12 ~~(l) The Judicial Council form for protective orders issued~~
13 ~~pursuant to this section shall contain a statement in substantially~~
14 ~~the following form:~~

15
16 ~~“If you have been personally served with a notice of hearing,~~
17 ~~but you do not appear at the hearing either in person or by a lawyer,~~
18 ~~a copy of the restraining order will be served on you by mail at~~
19 ~~the following address: ____.~~

20 ~~If that address is not correct or you wish to verify the issuance~~
21 ~~of a restraining order at the hearing and to find out the duration of~~
22 ~~that order, contact the clerk of the court.”~~

23
24 ~~(m) (1) Information on any protective order relating to elder~~
25 ~~or dependent adult abuse issued by a court pursuant to this section~~
26 ~~shall be transmitted to the Department of Justice in accordance~~
27 ~~with either paragraph (2) or (3).~~

28 ~~(2) The court shall order the petitioner or the attorney for the~~
29 ~~petitioner to deliver a copy of an order issued under this section,~~
30 ~~or a reissuance, extension, modification, or termination of the~~
31 ~~order, and any subsequent proof of service, by the close of the~~
32 ~~business day on which the order, reissuance, extension,~~
33 ~~modification, or termination was made, to each law enforcement~~
34 ~~agency having jurisdiction over the residence of the petitioner, and~~
35 ~~to any additional law enforcement agencies within the court’s~~
36 ~~discretion as are requested by the petitioner.~~

37 ~~(3) Alternatively, the court or its designee shall transmit, within~~
38 ~~one business day, to law enforcement personnel all information~~
39 ~~required under subdivision (b) of Section 6380 of the Family Code~~
40 ~~regarding any order issued under this section, or a reissuance,~~

~~1 extension, modification, or termination of the order, and any
2 subsequent proof of service, by either one of the following
3 methods:~~

~~4 (A) Transmitting a physical copy of the order or proof of service
5 to a local law enforcement agency authorized by the Department
6 of Justice to enter orders into the California Law Enforcement
7 Telecommunications System (CLETS).~~

~~8 (B) With the approval of the Department of Justice, entering
9 the order or proof of service into CLETS directly.~~

~~10 (4) Each appropriate law enforcement agency shall make
11 available information as to the existence and current status of these
12 orders to law enforcement officers responding to the scene of
13 reported abuse.~~

~~14 (5) An order issued under this section shall, on request of the
15 petitioner, be served on the respondent, whether or not the
16 respondent has been taken into custody, by any law enforcement
17 officer who is present at the scene of reported abuse involving the
18 parties to the proceeding. The petitioner shall provide the officer
19 with an endorsed copy of the order and a proof of service, which
20 the officer shall complete and send to the issuing court.~~

~~21 (6) Upon receiving information at the scene of an incident of
22 abuse that a protective order has been issued under this section,
23 or that a person who has been taken into custody is the respondent
24 to that order, if the petitioner cannot produce an endorsed copy of
25 the order, a law enforcement officer shall immediately attempt to
26 verify the existence of the order.~~

~~27 (7) If the law enforcement officer determines that a protective
28 order has been issued, but not served, the officer shall immediately
29 notify the respondent of the terms of the order and where a written
30 copy of the order can be obtained, and the officer shall at that time
31 also enforce the order. The law enforcement officer's verbal notice
32 of the terms of the order shall constitute service of the order and
33 is sufficient notice for the purposes of this section and for the
34 purposes of Section 273.6 of the Penal Code.~~

~~35 (n) Nothing in this section shall preclude any party, including
36 the proposed visatee, from representation by private counsel or
37 from appearing on the party's own behalf.~~

~~38 (o) The prevailing party in any action brought under this section
39 may be awarded court costs and attorney's fees, if any. The
40 nonprevailing party may also be required to pay the fees of the~~

1 ~~proposed visitee's attorney, whether or not court-appointed, and~~
2 ~~court costs.~~

3 ~~SEC. 3.~~

4 *SEC. 2.* No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution for certain
6 costs that may be incurred by a local agency or school district
7 because, in that regard, this act creates a new crime or infraction,
8 eliminates a crime or infraction, or changes the penalty for a crime
9 or infraction, within the meaning of Section 17556 of the
10 Government Code, or changes the definition of a crime within the
11 meaning of Section 6 of Article XIII B of the California
12 Constitution.

13 However, if the Commission on State Mandates determines that
14 this act contains other costs mandated by the state, reimbursement
15 to local agencies and school districts for those costs shall be made
16 pursuant to Part 7 (commencing with Section 17500) of Division
17 4 of Title 2 of the Government Code.